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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,405	03/05/2002	Yoshiki Nishitani	393032027920	1352

7590

05/22/2003

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EXAMINER

WARREN, DAVID S

ART UNIT

PAPER NUMBER

2837

DATE MAILED: 05/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/092,405

Applicant(s)

NISHITANI ET AL.

Examiner

David S. Warren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13 - 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-11, 13-22 and 24 is/are rejected.
- 7) ☒ Claim(s) 4-7, 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 3, 8, 9, 13, 15, 17, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fukumoto et al. (5,763,665). Regarding independent claims 1, 9, 13, 15, and 19, Fukumoto shows the use of a operational terminal carried by a human operator (col. 6, third paragraph), a tone signal generation apparatus (106), a motion trajectory detector (see claim 9), wherein a tone signal is generated on the basis of the motion trajectory (see fig. 1). Regarding dependent claims 2, 3, and 17, Fukumoto shows the use of a computer (1001, fig. 14). The rewritable table is equivalent to any “look-up” system, e.g., the fixed rhythm setting unit (103, fig. 13). Here, the motion trajectory detector’s output determines (“looks-up”) a rhythm from a preset pattern and this rhythm can be reset by the user. Furthermore, the table, as defined by applicant, is merely a means to associate an output tone with a detected motion trajectory. This is inherent with the Fukumoto teachings. Regarding claim 8, the movement trajectory detector of Fukumoto detects acceleration (col. 6, line 41). Regarding claim 21, the Fukumoto trajectory is inherently “a shape.”

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10, 11, 14, 16, 18, 20, 22 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Mishima (6,326,539). Regarding independent claims 10, 14, 16, and 20, Mishima discloses the use of an operation terminal carried by a human with an elastically deformable material, a sensor, and a tone signal generator, wherein a tone is produced in response to the deformation (these elements are all disclosed in the first paragraph of column 3. Regarding claim 11, Mishima discloses the use of a shoe. Regarding claims 18 and 20, Mishima discloses the use of a computer (CPU, col. 20, line 64). Regarding claim 22, the table (as defined by applicant) is merely a means to associate a output tone with a sensed deformation. This feature is inherent in the Mishima teachings. Regarding independent claim 24, Mishima also shows an embodiment where a stick is used to strike a deformable member to produce a musical tone (see fig. 16, columns 22 and 23). The device of figure 12 is deemed appropriate to be "capable of being carried by a human operator."

Allowable Subject Matter

Claims 4 – 7 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 4 – 7 include limitations to detecting a plurality of movement trajectory shapes and producing a tone in

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accordance with the detected shape. Fukumoto (nor any of the cited art, nor the prior art) does not teach such a feature. Regarding claim 23, Mishima (nor the prior art) does not disclose the use of using a "plurality of tone signal tables [that] are prepared in advance for individual ones of different floor surface materials."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 703-308-5234. The examiner can normally be reached on M-F, 9 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi can be reached on 703-308-3370. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-9529 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.


dsw

May 15, 2003


ROBERT E. NAPPI
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TECHNOLOGY CENTER 2800